

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

LISA ANN DUMONTIER,

Debtor.

Case No. **05-60598-13**

SUPPLEMENTAL MEMORANDUM OF DECISION

At Butte in said District this 28th day of October, 2005.

In this Chapter 13 case the final hearing was held at Missoula on October 13, 2005, on confirmation of the Debtor Lisa Ann Dumontier's (hereinafter "Lisa" or "Debtor") Amended Chapter 13 Plan, and objection thereto and motion to dismiss with prejudice filed by Debtor's former spouse and creditor Mike McVicker ("McVicker"). Lisa and McVicker each appeared at the hearing and testified. Lisa was represented by attorney Daniel S. Morgan ("Morgan"), and McVicker by attorney Harold V. Dye ("Dye"). The Chapter 13 Trustee Robert G. Drummond filed a consent to confirmation of Debtor's Amended Plan on October 12, 2005, and appeared at the hearing in support of confirmation of the Amended Plan filed October 3, 2005. Debtor's Exhibits ("Ex.") C, D, E, and F were admitted into evidence without objection. McVicker's Ex. 10, 12, 13, 14, and 15 also were admitted¹. In addition, at the request of counsel and without opposition the Court took judicial notice of the transcript and exhibits from the hearing held on July 7, 2005. At the conclusion of the parties' cases in chief, the Court closed the record and

¹Ex. 11, a photograph of the Debtor, her daughter and a leased Hummer, was first admitted and then excluded.

took both matters under advisement. After review of the record and applicable law, based upon the Trustee's consent and for the reasons set forth below, McVicker's objection to confirmation will be overruled, his motion to dismiss with prejudice will be denied, and the Debtor's Amended Chapter 13 Plan filed October 3, 2005, will be confirmed by separate Order.

This Court has jurisdiction of this Chapter 13 case under 28 U.S.C. § 1334(a). The pending matters are core proceedings under 28 U.S.C. § 157(b)(2). This Supplemental Memorandum of Decision includes the Court's additional findings of fact based upon the record established at the hearing held on October 13, 2005, and conclusions of law.

SUPPLEMENTAL FINDINGS OF FACT

This Court incorporates by reference, as though set forth in full herein, the facts adduced from the hearing held on July 7, 2005, as set forth in the Court's Memorandum of Decision entered on September 20, 2005 (Docket No. 60), at pages 2 through 19. Thus, those facts need not be restated here.

Subsequent to the July 7, 2005, hearing the Debtor submitted a status report that she was surrendering her 2002 Mercedes coupe. The Court rejected the status report as evidence. At hearing on October 13, 2005, Lisa testified that she traded in her Mercedes sometime in late August 2005, after she remarried. She testified she tried to sell the Mercedes and could not, and that she made monthly car payments of \$565 from March through July of 2005, a total of \$2,825.

On August 19, 2005, Lisa married Steven M. Perry ("Perry") of Charlo, Montana, in Coeur d'Alene, Idaho. Ex. 12. Perry is employed by his family corporation at a dairy farm in Charlo. Lisa testified that she and Perry continue to maintain separate homes because Perry maintains a household where he works, about 20 miles from her house. She testified that Perry

has not moved into her home on her father's Indian trust land on Dumontier Road outside of Arlee, Montana, but that he stays there occasionally and Perry's two daughters sleep at her house no more than 1 night per week. On such occasions, Lisa testified, she feeds Perry's daughters, which increases her grocery bill slightly. She testified that Perry contributes about \$100 per month for her propane bill, but that otherwise he does not contribute any money to her household. Ex. F consists of Perry's W-2 and state and federal tax returns for 2004, and they show Perry's 2004 adjusted gross income as \$8,700.00. Perry's employer provides him with housing, utilities and use of a farm vehicle.

Lisa testified that she and Perry discussed their financial situation and their combined six children, and decided to get rid of her Mercedes and Perry's late model Ford Mustang. Together with Lisa's mother, Virginia, about 5 days after they married Lisa and Perry traded in her Mercedes and his Mustang on a 2003 Hummer H2 ("Hummer") which was purchased in Virginia's name only, on August 24, 2005. Ex. 10. Ex. 10 shows that the trade-in allowance for the Mercedes and Mustang totaled \$42,500.00, which was \$8,523.92² less than the \$51,023.92 payoff on the loans for those 2 vehicles made by the dealer, George Gee Automotive in Liberty Lake, Washington. Lisa testified that WFS Financial, Inc., which was secured by the Mercedes, was paid in full. She testified that she believes she lost between \$700 and \$800 dollars trading in her Mercedes. The \$8,523.92 deficit on the trade-in allowance was added to the purchase price

²Dye cross examined Lisa about the trade-in allowance for both Lisa's Mercedes and Perry's Mustang. Lisa refused to concede Dye's contentions. The trade-in provisions for both cars are on page 3 of Ex. 10, but they are illegible and the lines do not match up. Lisa testified that what appears to be \$17,000 owed on the Mercedes on page 3 of Ex. C is not correct and the dealer gave Perry that amount of trade-in credit on his Mustang. In any event, page 4 of Ex. 10 summarizes the trade-in allowance for both cars as part of the downpayment as set forth above.

of the Hummer for a total amount financed of \$56,166.67 and a total sale price of \$70,647.84.

Ex. 10, p. 4.

Lisa testified that she and Perry put no money down on the Hummer, and they make no payment on the Hummer. She testified that Virginia makes all payments on the Hummer, including the \$8,523.92 negative equity from the trade in of Lisa's Mercedes and Perry's Mustang. She testified that the Hummer usually is parked in Virginia's garage next door to Lisa's house, unless Lisa is using it when she parks it in her garage. Lisa testified she is allowed to drive the Hummer if she gets Virginia's permission, and has driven the Hummer twice since August 2005. Lisa testified that most often she now drives her mother's Avalanche or Oldsmobile Aurora³. McVicker testified that, during his trips to Lisa's house to see his children a couple of times each week, he usually sees Perry and usually sees Virginia's Avalanche and Hummer in Lisa's garage, not in her parents' garage next door. McVicker testified that he has never seen Virginia drive either the Hummer or the Avalanche.

On October 3, 2005, Debtor filed amended Schedules B, D, I and J and an amended Plan. Ex. C, D. Schedule I added Perry's two daughters, aged 10 and 7, as Debtor's dependents. However, Lisa testified that she does not provide support for Perry's daughters or consider them her dependents, other than feeding them an occasional meal when they sleep at her house. She testified that she does not claim Perry's children as her dependents on her tax returns.

Schedule I lists Debtor's monthly income as \$3,300.00, including the \$1,200 per month from her mother and \$2,100 in real estate commissions. Ex. C. This income represents a

³Virginia and Leroy Dumonter also own 2 pickup trucks in addition to the Oldsmobile Aurora and the Hummer. Lisa admitted that her parents let her use all their cars.

decrease from her projected commissions of \$4,000 listed on her first amended Schedule I. Ex. E shows Debtor's commissions from Mission Valley Properties, Inc., from February 16, 2005 through July 27, 2005, in the total amount of \$8,738.24, or \$970.69 per month. Lisa testified that she has changed employers and now works at Gillespie Realty in Missoula. She testified that her custody dispute⁴ with McVicker in her divorce adversely impacted her ability to work and reduced her commission income because she had to work out of her home because of McVicker's complaints she was not home with their children, but that with her move to Gillespie Realty she should be able to earn higher income than her projected \$2,100 in commissions per month. Lisa testified that she does not list Perry's income on her Schedule I because he does not contribute to her household and has no net income⁵.

Debtor's latest amended Schedule J lists Debtor's current expenditures in the sum of \$3,095.95 per month, including \$1,188.29 in monthly business expenses. Ex. C. That is a decrease from her previous Schedule J which listed monthly expenses in the amount of \$5,279.63, including \$2,627.50 in business expenses of which \$1,000.00 was for monthly car and truck expenses for the Mercedes and Avalanche. Her monthly food expense increased from \$500 to \$528 to reflect feeding Perry's daughters occasionally.

Lisa testified that she arrived at the \$12,000 estimated annual car & truck business

⁴Lisa testified that the state court has approved a final parenting plan for her and McVicker, under which Lisa has physical custody of their children 3 days per week and McVicker has them 4 days per week. Lisa will get no child support and must undergo counseling. She testified that McVicker has not followed the parenting plan since it was drawn up.

⁵She testified that the money Perry was paying on his Mustang is now being paid to repay a loan from his divorce.

expense based on a mileage rate, and that her actual car & truck expense reflected on the third column of her business expenses on Ex. C was \$1,215 through September 30, 2005, or \$135 per month. She testified that her legal fees doubled because of her custody fight and divorce, and the \$250 actual professional expense included nothing for Morgan. Her business utilities dropped by half, Lisa testified, because Virginia contributes part of the utility bills and for irrigation. Ex. C. Her cell phone dropped by 3/4 because she changed her calling plan. No credible evidence was offered refuting the validity of Lisa's monthly expenses as amended.

Lisa testified that her projected expenses are subject to availability of her commission income, and Lisa testified that she does not spend money on home repairs, clothing, recreation or other expenses when her earnings leave her without money to spend. On cross examination Lisa admits that her parents help her a lot. They paid \$15,000 for her divorce from McVicker, and make monthly payments on Virginia's jet ski, Avalanche and Hummer which they let Lisa use.

Debtor's amended Plan filed October 3, 2005, Ex. D, provides for monthly payments in the amount of \$230, plus 10% of Debtor's net real estate commissions for a period of 60 months. The Amended Plan's footnote 1 corroborates Lisa's testimony that the Mercedes was traded in and WFS Financial, Inc., was paid in full by the dealer. The liquidation analysis at paragraph 2(f) states that unsecured claims will receive a distribution of at least \$7,500.00, and she expects but cannot guarantee that she will pay at least another \$10,000.00 from her real estate commissions. Ex. D, p. 2. Lisa testified that the liquidation increased by \$2,500 from her previous Plan because she extended the term of her plan from 3 to 5 years. Otherwise, Lisa testified, she cannot increase her plan payments because she cannot make ends meet as it is without her mother's help. As reflected by the Chapter 13 Trustee's consent to confirmation,

Lisa is current on her plan payments.

DISCUSSION

1. Contentions of the Parties.

On October 12, 2005, the Chapter 13 Trustee withdrew all his objections to confirmation and filed a consent to confirmation of Debtor's Amended Plan filed October 3, 2005. The Trustee's Consent affirmatively states that Debtor's Plan has been proposed in good faith, represents the Debtor's best efforts and she appears to be able to make the payments under the Plan.

McVicker filed a supplemental objection to confirmation on October 10, 2005, reiterating his earlier objections, and in addition alleging that the Debtor's second Amended Plan was not timely filed⁶. By realleging his earlier objections McVicker incorporated the Trustee's now-withdrawn objections, and argues that none of them have been cured by the Amended Plan. Thus McVicker continues to allege, as in his motion to dismiss, Debtor's bad faith by omitting assets from her schedules and misrepresenting other facts, and that the Plan's failure to deal with McVicker's secured claim (which has been disallowed⁷). Plus, McVicker incorporates the

⁶The Court overruled McVicker's timeliness objection at the hearing. Morgan attended the Montana State Bar Bankruptcy Section Continuing Legal Education ("CLE") seminar held at Great Falls on September 29 and 30, 2005, where he and other Montana attorneys were informed about the provisions of the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" which implements major changes in the Bankruptcy Code. Morgan filed Debtor's amended Schedules and Plan on the next business day, which this Court was satisfied was sufficiently in compliance with this Court's Order that it overruled McVicker's timeliness objection in its discretion.

⁷McVicker filed a notice of appeal of this Court's Memorandum and Order of September 20, 2005, which disallowed his secured claim. Until reversed, however, that Memorandum and Order shall control.

Trustee's withdrawn objections to confirmation which included bad faith and understating her income, failure to turn over tax returns and documents, and failure to provide for American General Finance's secured claim, even though the Trustee has withdrawn such objections and consented to confirmation on the basis they were cured. Lastly McVicker objects, without discussion, to confirmation on the grounds that Debtor's Plan fails to meet the "best interest of creditors" test of 11 U.S.C. § 1325(a)(4).

The Debtor submits that all the Trustee's objections to confirmation were cured by his consent, and that her Chapter 13 case and Amended Plan have been proposed in good faith and should be confirmed, and McVicker's motion to dismiss with prejudice should be denied.

2. Confirmation – 11 U.S.C. § 1325.

"For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met." *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1995); *Chinichian v. Campolongo*, 784 F.2d 1440, 1443-44 (9th Cir.1986).

The Court views the Trustee's consent to confirmation as support for the Debtor in satisfying her burden of proof that each element of § 1325 has been met. The Trustee raised a number of objections to confirmation, but withdrew all of them and consented to confirmation, including affirmatively stating that Debtor's second Amended Plan is proposed in good faith.

Good faith will be discussed below with McVicker's motion to dismiss. With respect to McVicker's wholesale adoption of the Trustee's withdrawn objections to confirmation, and his assertion that none of the withdrawn objections have been cured, the Court finds such assertion without merit, and frankly remarkable in light of the Trustee's consent. In fact, most of the Trustee's and McVicker's objections are shown to be either plainly cured, or rendered moot by

the developments in this case. They may be disposed of quickly in serial fashion.

First, Debtor's alleged omission of assets was addressed by two amendments to her Schedules which added assets, and her testimony at hearing on July 7, 2005, which explained gifts of jewelry and other assets to her daughters, without contradiction. Next, McVicker's secured claim was disallowed by the Court's Memorandum and Order entered September 20, 2005, so the Plan's failure to provide for McVicker's secured claim cannot be grounds for objection, unless that decision is reversed on appeal. Likewise, the objection that the Plan fails to provide for American General's secured claim was rendered moot by Order entered June 21, 2005, which sustained the Debtor's unopposed objection and reclassified American General's Proof of Claim No. 3 as an unsecured nonpriority claim. The Trustee's objection based on Debtor's failure to turn over tax returns and documents was cured, as the Trustee stated at hearing on July 7, 2005, more than three months before McVicker filed his supplemental objection stating none of such objections have been cured.

The Trustee's objection based on disposable income and understating income were not only cured by his consent, but also by Debtor's two amendments to her Schedule I showing her reduced projected income. If anything the Debtor has consistently overestimated her projected income, not understated it. Indeed, Ex. E and Debtor's testimony show that she still has difficulty earning enough income to pay her expenses and make her plan payments, and could not without her mother's commitment to help her make her plan payments. Furthermore, by extending her plan term to 5 years the disposable income test can be satisfied by a plan that pays less than all of a debtor's disposable income for a period longer than the three years required by § 1325(b). *In re Mendoza*, 274 B.R. 522, 525 (Bankr. D. Ariz. 2002). In short, contrary to

McVicker's contention that none of the outstanding objections to confirmation have been cured by Debtor's second Amended Plan, this Court finds all the above-discussed objections were cured or rendered moot by Debtor's amendments to her Schedules and Plan, and developments in this Chapter 13 case including disallowance of secured claims and the Trustee's consent.

Next McVicker objects, without elaboration, to confirmation based on the "best interest of creditors" test, 11 U.S.C. § 1325(a)(4) which provides that the court shall confirm a plan if: "(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date". *See In re Sutton*, 19 Mont. B.R. 220, 225 (Bankr. D. Mont. 2001), quoting *In re Beguelin*, 220 B.R. 94, 98-99 (9th Cir. BAP 1998).

McVicker raised his best interest of creditors objection prior to July 7, 2005, hearing which resulted in disallowance of his secured claim on the Debtor's residence which Debtor listed in her amended Schedule A as having a current market value of \$0.00. As set forth in this Court's Memorandum of Decision entered September 20, 2005, Debtor's house is located on a homesite leased from her father Leroy on Indian trust land to which he alone controls access and refuses to allow sale or removal of Debtor's house. The lease payment was \$1 for 25 years. Based on that evidence of inaccessibility and inability to market Debtor's house, this Court agrees that the current market value of her leasehold and house is \$0 for the simple reason that it cannot be sold.

As far as Debtor's other assets claimed on amended Schedule B with a total value of \$57,004.38, Ex. C, many of her assets are claimed exempt under amended Schedule C, others as

shown by Lisa's testimony at the July 7, 2005, hearing show that she made gifts of assets to her daughters. Her mother solely owns the wave runner, Hummer, and Avalanche, and all evidence shows those are not property of the estate. Together with the Trustee's consent and absence of any argument, or evidence from McVicker, the Court finds that the Debtor has satisfied her burden of proof under § 1325(a)(4), and McVicker's "best interest of creditors" objection is overruled.

3. McVicker's Objection to Confirmation and Motion to Dismiss for Bad Faith.

McVicker objects to confirmation and moves to dismiss this case with prejudice on the grounds the case is filed and is being prosecuted in bad faith. The good faith requirement of § 1325(a)(3) is a mandatory requirement. *In re Barnes*, 32 F.3d at 407; *Chinichian v. Campolongo*, 784 F.2d at 1442. The Ninth Circuit has held that bad faith is "cause" for dismissal of a Chapter 13 case with prejudice under § 349(a) and § 1307(c). A dismissal with prejudice bars further bankruptcy proceedings and is a complete adjudication of the issues. *Leavitt v. Soto*, 171 F.3d 1219, 1223-24 (9th Cir.1999) (citing *In re Tomlin*, 105 F.3d 933, 936-37 (4th Cir.1997)); *In re McNichols*, 254 B.R. 422, 436 (Bankr. N.D. Ill. 2000).

In determining whether a petition or plan is filed in good faith the court must review the "totality of the circumstances". *Leavitt*, 171 F.3d at 1224-25; *In re Gress*, 257 B.R. 563, 567, 19 Mont. B.R. 30, 34 (Bankr. D. Mont. 2000); *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). In affirming this Court's dismissal of a Chapter 13 case with prejudice, the district court in this district has adopted the *Leavitt* "totality of the circumstances" list of factors. *In re Kreilick*, 18 Mont. B.R. 419, 421-22 (D. Mont. 2000); *In re Hungerford*, 19 Mont. B.R. 103, 130 (Bankr. D. Mont. 2001).

A finding of bad faith does not require fraudulent intent by the debtor. *Hungerford*, 19 Mont. B.R. at 130; *Gress*, 257 B.R. at 568:

This Court noted in *Gress*:

A finding of bad faith does not require fraudulent intent by the debtor.

[N]either malice nor actual fraud is required to find a lack of good faith. The bankruptcy judge is not required to have evidence of debtor illwill directed at creditors, or that debtor was affirmatively attempting to violate the law-malfeasance is not a prerequisite to bad faith.

In re Powers, 135 B.R. 980, 994 (Bankr.C.D.Cal.1991) (relying on *In re Waldron*, 785 F.2d 936, 941 (11th Cir.1986)).

The determination of whether a debtor filed a petition or plan in bad faith so as to justify dismissal for cause is left to the sound discretion of the bankruptcy court. *In re Leavitt*, 171 F.3d at 1222-23; *In re Marsch*, 36 F.3d 825, 828 (9th Cir.1994); *Greatwood v. United States (In re Greatwood)*, 194 B.R. 637, 639 (9th Cir. BAP 1996), *aff'd*, 120 F.3d 268 (9th Cir.1997).

The same factors govern whether *Gress* filed his petition or his plans in bad faith. *In re Eisen*, 14 F.3d at 470; *In re Leavitt*, 171 F.3d at 1224.

257 B.R. at 568. Thus, this Court has the discretion to dismiss this case for lack of good faith.

In *Leavitt*, 171 F.3d at 1224, the Ninth Circuit held that in determining whether a chapter 13 plan was proposed in good faith, a bankruptcy court should consider (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Code, or otherwise filed his petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor intended to defeat state court litigation; and (4) whether egregious behavior is present. *See also In re Cavanagh*, 250 B.R. 107, 114 (9th Cir. BAP 2000).

In addition to being grounds for denial of confirmation, bad faith is "cause" for a dismissal of a Chapter 13 case with prejudice under § 349(a) and § 1307(c), even though not

specifically listed. *In re Gress*, 257 B.R. at 567; *Leavitt*, 171 F.3d at 1224; *In re Eisen*, 14 F.3d at 470 ("A Chapter 13 petition filed in bad faith may be dismissed 'for cause' pursuant to 11 U.S.C. § 1307(c)."). Applying the *Leavitt* factors to the evidence admitted in this case, the Court finds and concludes that the Debtor has satisfied her burden of proof under § 1325(a)(3) that the second Amended Plan has been proposed in good faith, and overrules McVicker's bad faith objection and denies his motion to dismiss with prejudice.

The Court discussed the *Leavitt* factors in its Memorandum entered September 20, 2005. The first *Leavitt* factor is whether the Debtor misrepresented facts in her petition or plan, unfairly manipulated the Code, or otherwise filed her petition or plan in an inequitable manner. McVicker contends that the Debtor is unfairly manipulating the bankruptcy process by fraudulently omitting her Arlee home, rings and other assets and transfers from her Schedules and Statement of Financial Affairs, understating her income and overstating her business expenses, and falsely testifying that the Avalanche and Waverunner are for the benefit of her mother in a scheme to retain the use of luxury assets.

The Debtor amended her Schedules to list her Arlee house and other assets, and explained that certain assets were hidden to prevent theft by McVicker or gifted to her children. The evidence of bad faith offered by McVicker subsequent to the July 7, 2005, hearing is her trade-in of the Mercedes at a loss, failure to increase her monthly plan payments, and her use and possession of her mother's Hummer and other enjoyment of her parents' financial support.

Liberal amendment of schedules is allowed as a matter of course at any time before a case is closed under Rule 1009(a). *In re Michael*, 163 F.3d 526, 529, 17 Mont. B.R. 192, 198 (9th Cir. 1998) (citing cases). However, amendment may be denied on a showing of a debtor's bad

faith. *Id.*; *In re Magallanes*, 96 B.R. 253, 255-56 (9th Cir. BAP 1988). The Debtor failed to list the Arlee house, but because of the terms of the homesite lease and Leroy's ability to prevent sale or access to the property, the evidence of which is persuasive and uncontroverted, the value she placed on the leasehold of \$0 is not evidence of bad faith. Lisa testified that her real estate commission income has not met her projections. It cannot be disputed that real estate commission income is subject to variance for a variety of reasons. Debtor's expenses were listed and amended twice, and the Debtor freely admitted that when she does not earn her commission income she does not spend money on projected expenditures. Such circumstances of belt tightening do not evidence bad faith.

The evidence at trial is uncontroverted that Debtor's parents contribute \$1,200 to help with living expense and her Chapter 13 Plan. In addition her mother makes the payment for both the Avalanche, the Waverunner, and now the Hummer, and allows the Debtor to use those assets, and helps with Debtor's utilities. McVicker argued at hearing on July 7, 2005, that Lisa's parents' contributions could be used to pay for other things, but McVicker cites no case law imposing a requirement that family contributions be specifically earmarked, and the evidence shows that the Debtor uses the Avalanche primarily, and the Waverunner exclusively, in her employment. She uses the Hummer hardly at all, and while McVicker testified that he has seen the Hummer in Debtor's garage he did not testify that he has ever seen her drive it, and even if he did the support which Debtor receives from her parents is not evidence of bad faith. After consideration of all the evidence, the Court concludes on balance that the first *Leavitt* factor does not support a finding of bad faith.

The second *Leavitt* factor is the debtor's history of filings and dismissals. No evidence

exists of any prior filings by Lisa, and thus the second *Leavitt* factor weighs squarely against a finding of bad faith.

The third *Leavitt* factor is whether the debtor intended to defeat state court litigation. The Debtor listed McVicker's claim in her Schedules, and while she objected to his secured claim her objection was successful and she admits his claim should be allowed as an unsecured nonpriority claim in the amount filed. The evidence in the record shows that she decided to file for bankruptcy protection because her commission income dropped and McVicker was paying nothing in child support. That evidence was and remains uncontroverted. The third *Leavitt* factor weighs against a finding of bad faith.

The final *Leavitt* factor is whether egregious behavior is present. The Debtor retained the use of the Mercedes from March 2005 almost through the month of August, making monthly car payments of \$565 from March through July of 2005, a total of \$2,825 spending almost \$560 per month which could have gone to plan payments while retaining the use of a new vehicle paid for by her parents. Balancing that is Debtor's extension of her plan term to 60 months with at least another \$2,500, and possibly \$10,000 more, distributed to unsecured claims.

Debtor's omission of assets and transfers from her original Schedules is troubling, but the Court is bound to permit liberal amendment of schedules under Rule 1009(a) absent bad faith. *In re Michael*, 163 F.3d at 529, 17 Mont. B.R. at 198-99 (affirming BAP's reversal of bankruptcy court, and holding amendment of schedule was permissible). All things considered, and the other 3 *Leavitt* factors weighing against a finding of bad faith, the Court in the exercise of its sound discretion concludes that the fourth *Leavitt* factor of egregious behavior is not shown to a sufficient degree to warrant denial of confirmation and dismissal with prejudice for lack of good

faith. *Leavitt*, 171 F.3d at 1222-23; *Gress*, 257 B.R. at 568.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this Chapter 13 case under 28 U.S.C. § 1334(a).
2. Confirmation of Debtor's second Amended Chapter 13 Plan and McVicker's motion to dismiss with prejudice are core proceedings under 28 U.S.C. § 157(b)(2).
3. The Debtor satisfied her burden of proof under 11 U.S.C. § 1325(a) for confirmation of her second Amended Chapter 13 Plan, including showing that she filed her Chapter 13 case and Plan in good faith. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1995); *Chinichian v. Campolongo*, 784 F.2d 1440, 1443-44 (9th Cir.1986).
4. McVicker failed to satisfy his burden of proof to warrant dismissal of this case with prejudice on grounds of bad faith.

IT IS ORDERED separate Orders shall be entered in conformity with the above denying McVicker's motion to dismiss with prejudice, filed April 20, 2005; overruling McVicker's objections to confirmation, and confirming Debtor's second Amended Chapter 13 Plan filed October 3, 2005.

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana